

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ACTUS, LLC)	
)	
Plaintiff,)	Civil Action No. 2:09-CV-102 (TJW)
)	
v.)	
)	
BANK OF AMERICA CORP., et al.)	
)	
Defendants.)	
)	
)	
)	

DEFENDANT ENABLE HOLDINGS, INC.’S MOTION TO DISMISS

Defendant Enable Holdings, Inc. (“Enable”) hereby joins in the motions to dismiss filed by Defendants MasterCard International (“MasterCard”) {Docket No. 58}, Bank of America Corp. (“Bank of America”) {Docket No. 77}, and Visa, Inc. (“Visa”) {Docket No. 101}.

The reasons the claims against Enable must be dismissed are the same as those articulated by MasterCard, Bank of America and Visa. Rather than burden the court with more briefing, Enable joins and adopts the motions and incorporates the arguments by reference as allowed by Federal Rule of Civil Procedure 10; namely, that:

- (1) Plaintiff failed to state a claim for direct infringement of the patents-in-suit in light of its failure to allege that Enable performs each and every step of the claimed method,
- (2) Plaintiff failed to state a claim for joint infringement in light of its failure to allege that a single “mastermind” is vicariously liable for the conduct of each of the entities involved in carrying out the claimed invention,
- (3) Plaintiff failed to plead facts sufficient to show it has standing, and

(4) Any attempt by Plaintiff to amend its complaint to comply with the pleading requirements set forth in Federal Rules of Civil Procedure 8 and 11 would be futile.

Enable Holdings respectfully requests that the Court grant its motion and dismiss Plaintiff's claims against Enable Holdings with prejudice.

Dated: June 25, 2009

By: /s/ Brian Craft

Brian Craft

State Bar No. 04972020

Eric Findlay

State Bar No. 00789886

FINDLAY CRAFT, LLP

6760 Old Jacksonville Hwy, Suite 101

Tyler, TX 75703

Telephone: (903) 534-1100

Facsimile: (903) 534-1137

bcraft@findlaycraft.com

efindlay@findlaycraft.com

Lora Mitchell Friedemann

Joshua R. Williams

FREDRIKSON & BYRON, P.A.

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402-1425

Telephone: (612) 492-7000

Facsimile: (612) 492-7077

ATTORNEYS FOR ENABLE HOLDINGS, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 25th day of June, 2009.

/s/ Brian Craft
Brian Craft

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